

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MONTRELL GREEN,

Petitioner,

v.

WARDEN T. J. CONLEY ,

Respondent.

1:17-cv-2079-WSD

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Alan J. Baverman’s Final Report and Recommendation [4] (“R&R”), recommending that this action be dismissed.

I. BACKGROUND

On September 15, 2005, in Gwinnett County state court, Petitioner Montrell Green (“Petitioner”) was convicted of malice murder, rape, sodomy, burglary, and possession of a knife during the commission of a felony (together, “1995 Convictions”). ([1] at 1). Petitioner was sentenced to a term of life imprisonment. ([1] at 1). On November 16, 2012, in the Northern District of Georgia, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 (“First Habeas Petition”), challenging his 1995 Convictions. See

Green v. Williams, No. 1:12-CV-4025-JEC (N.D. Ga. Nov. 16, 2012), Doc. No. 1. On July 28, 2014, the Green court denied Petitioner's habeas petition on the merits. Id., Doc. No. 10.

On June 5, 2017, without obtaining permission from the Eleventh Circuit Court of Appeals, Petitioner filed his second Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 [1] ("Second Habeas Petition") in which he again challenges his 1995 Convictions. On June 14, 2017, the Magistrate Judge issued his R&R, recommending that Petitioner's Second Habeas Petition be dismissed as impermissibly successive because Petitioner failed to obtain authorization from the Eleventh Circuit before filing the petition. Petitioner did not file objections to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1);

Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S.

1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which

objection is made.” 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Petitioner did not file objections to the R&R, and the Court thus reviews it for plain error.

B. Analysis

“A state prisoner who has previously filed a § 2254 petition in federal court must obtain authorization from [the Eleventh Circuit Court of Appeals] before filing a ‘second or successive’ collateral attack on the same conviction.”

Philistin v. Warden, ___ Fed. App’x ___, 2017 WL 3129105, at *1 (11th Cir. July 24, 2017). “Without authorization, the district court lacks jurisdiction to consider a successive § 2254 petition and must dismiss the claims presented therein.” Id.

The Magistrate Judge found that this action should be dismissed because Petitioner “failed to obtain the necessary authorization” from the Eleventh Circuit to file his Second Habeas Petition, and “the District Court [thus] lacks subject matter jurisdiction to consider the present petition.” (R&R at 2). The Court finds no plain error in the Magistrate Judge’s determination, and this action is dismissed. See Jeremiah v. Terry, 322 F. App’x 842, 844 (11th Cir. 2009) (“A state prisoner

may not file a second or successive petition for a writ of habeas corpus in the district court unless the prisoner has obtained permission from the Court of Appeals. If a state prisoner files a second or successive § 2254 petition without this authorization, the district court is required to dismiss the petition for lack of jurisdiction unless the petitioner has obtained an order authorizing the district court to consider it.” (citation omitted)).


III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Alan J. Baverman’s Final Report and Recommendation [4] is **ADOPTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED this 11th day of October, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE